IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Appellant:	Carroll et al.	)	Confirmation No. 4737
Filed:	October 7, 2003	)	Art Unit: 3691
Serial No.:	10/680,020	)	Examiner: Campen, Kelly Scaggs
		)	Docket No.: 013647.00013
For: SYSTEM AND METHOD FOR UPDATING MERCHANT PAYMENT DATA		)	

APPEAL BRIEF

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TABLE OF CONTENTS

I. REAL PARTY OF INTEREST (37 C.F.R. § 41.37(c)(1)) 2

II. RELATED APPEALS AND INTERFERENCES (37 C.F.R. § 41.37(c)(2)) 3

III. STATUS OF CLAIMS (37 C.F.R. § 41.37(c)(3)) 4

A. TOTAL NUMBER OF CLAIMS IN APPLICATION 4

B. STATUS OF ALL THE CLAIMS 4

1. Claims cancelled: NONE 4

2. Claims withdrawn from consideration but not cancelled: NONE 4

3. Claims pending: 1-21 4

4. Claims allowed: NONE. 4

5. Claims rejected: 1-21 4

C. CLAIMS ON APPEAL 4

IV. STATUS OF AMENDMENTS (37 C.F.R. § 41.37(c)(4)) 5

V. SUMMARY OF THE CLAIMED SUBJECT MATTER (37 C.F.R. § 41.37(c)(5)) 6

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL ((37 C.F.R. § 41.37(c)(6)) 8

VII. ARGUMENTS ((37 C.F.R. § 41.37 (c)(7)) 9

VIII. APPENDIX OF CLAIMS (37 C.F.R. § 41.37(c)(8)) 22

IX. EVIDENCE APPENDIX (37 C.F.R. 41.37(c)(9)) 26

X. RELATED PROCEEDINGS APPENDIX (37 C.F.R. 41.37(c)(10)) 27

PATENT

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Appln. No.:	10/680,020	)	Examiner: Campen, Kelly Scaggs
		)	Group Art Unit: 3691
Filed:	October 7, 2003	)	
For:	SYSTEM AND METHOD FOR UPDATING MERCHANT PAYMENT DATA	)	Attorney Docket 013647.00013

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Alexandria, Virginia 22313-1450

APPELLANT'S BRIEF (37 C.F.R. 4 1.37)

This brief is in furtherance of the Final Office Action mailed February 2, 2009.

The final page of this brief bears the practitioner's signature.

I. REAL PARTY OF INTEREST (37 C.F.R. § 41.37(c)(1))

The real party in interest in this appeal is Paymentech L.P., by virtue of an Assignment from the inventors Tonya Lin Carroll, Chantal Adair Gaspie, Gwen Ellen Murray and Lakshma Reddy Eapur to Paymentech L.P., recorded with the U.S. Patent and Trademark Office on October 7, 2003 at Reel 014598, Frame 0337.

II. RELATED APPEALS AND INTERFERENCES (37 C.F.R. § 41.37(c)(2))

There are no such appeals or interferences.

III. STATUS OF CLAIMS (37 C.F.R. § 41.37(c)(3))

The status of the claims in this application are:

A. TOTAL NUMBER OF CLAIMS IN APPLICATION

Claims in the application are: 21 (Claims 1-21)

Claims currently pending in the application: 21 pending claims

B. STATUS OF ALL THE CLAIMS

1. Claims cancelled: NONE

2. Claims withdrawn from consideration but not cancelled: NONE

3. Claims pending: 1-21

4. Claims allowed: NONE.

5. Claims rejected: 1-21

C. CLAIMS ON APPEAL

The claims on appeal are: 1-21

IV. STATUS OF AMENDMENTS (37 C.F.R. § 41.37(c)(4))

The claims presently pending are those submitted with the filing of an Amendment on June 23, 2008, and an amendment after final filed on April 2, 2009 to address various objections to formalities as noted by the Examiner.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER (37 C.F.R. § 41.37(c)(5))

The following summary is provided without any intention to limit the scope of the claims.

A system for updating merchant on file payment data at a payment processor comprising a merchant processing selection system receiving selection data for one of two or more types of on file payment data update processing. By way of example and not by limitation, see, e.g., merchant system 202 of Fig. 2 and the associated description at page 11, line 12 to page 13, line 28 of the specification. A merchant account update system receiving the selection data and processing account update data based on the selection data. By way of example and not by limitation, see, e.g., merchant account update system 114 of Fig. 1 and the associated description at page 5, line 8 to page 11, line 8 of the specification.

Claim 11 includes a method for updating merchant on file payment data at a payment processor comprising requesting an update type selection from a merchant. By way of example and not by limitation, see, e.g., 402 of Fig. 4 and the associated description at page 16, lines 8 to 17 of the specification. Extracting update records at the payment processor if an extraction update type selection is received from the merchant. By way of example and not by limitation, see, e.g., 408 of Fig. 4 and the associated description at page 17, lines 8 to 11 of the specification. Formatting the extracted update records based on format rules for each of two or more card processing systems. By way of example and not by limitation, see, e.g., 518 of Fig. 5 and the associated description at page 21, lines 7 to 14 of the specification.

Claim 16 includes a method for updating merchant on file payment data at a payment processor comprising requesting an update type selection from a merchant. By way of example and not by limitation, see, e.g., 402 of Fig. 4 and the associated description at page 16, lines 8 to 17 of the specification. Extracting update records at the payment processor if an extraction update type selection is received from the merchant. By way of example and not by limitation, see, e.g., 408 of Fig. 4 and the associated description at page 17, lines 8 to 11 of the specification. Receiving update records from the merchant if a batch update type selection is received from the merchant. By way of example and not by limitation, see, e.g., 412 of Fig. 4 and the associated description at page 17, lines 19 to 30 of the specification.

Claim 21 includes the system of claim 1 wherein the a merchant processing selection

system receiving the selection data for one of two or more types of on file payment data update processing comprises means for receiving the selection data for one of two or more types of on file payment data update processing. By way of example and not by limitation, structure corresponding to this means plus function limitation can be found at Fig. 4 and the associated description at page 16, lines 8 to page 19, line 20 of the specification.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL ((37 C.F.R. § 41.37(c)(6))

1. Whether claims 1-2 and 4 are properly rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,231,569 to Myatt et al.

2. Whether claims 3 and 5-21 are properly rejected under 35 U.S.C. 103(a) as being unpatentable over Myatt et al., as applied in the 102 rejection, and further in view of U.S. Patent No. 6,990,471 to Rajaram.

VII. ARGUMENTS ((37 C.F.R. § 41.37 (c)(7))

1. Myatt fails to provide a basis for the rejection of claims 1, 2 and 4 under 35 U.S.C. 102(b), because it fails to disclose each element of the claimed inventions.

The construction of the claims adopted by the Examiner is incorrect, and is used to improperly reject the claims. Claim construction is a question of law, and is reviewed *de novo*. *Markman v. Westview*, 52 F. 3d 967, 34 USPQ2d 1321 (Fed. Cir. 1995), *aff 'd* 116 S.Ct. 1384 (1996). No deference is given to the claim constructions adopted by the Examiner, most of which are implicit and which are not explicitly set forth. Because claim construction is reviewed *de novo*, it is not necessary for the Examiner to set forth an explicit construction, and remand for that reason is therefore not required in the event that the Examiner fails to set forth an explicit claim construction. It is further noted that claim terms should be given their broadest reasonable construction during prosecution, which is their ordinary meaning. The Appellants request that the Board pay careful attention to the numerous claim construction issues discussed below.

Claim 1 includes a system for updating merchant on file payment data at a payment processor comprising a merchant processing selection system receiving selection data for one of two or more types of on file payment data update processing and a merchant account update system receiving the selection data and processing account update data based on the selection data. The Examiner relies on Myatt at col. 3 and col. 4, lines 25-45 as allegedly disclosing these elements, but cannot identify exactly what in Myatt is the merchant processing selection system and the merchant account update system. The systems and components of Myatt are numbered, and it is certainly not asking too much for the Examiner to identify specifically which system or component of Myatt is supposed to correspond to the various claim limitations, but even that minor step has not been performed. As such, the Applicants are unable to directly address any arguments presented by the Examiner, because there are none.

However, in an attempt to frame the issues for consideration by the Board, each claim limitation will be considered by the Applicants in light of Myatt. First, consider the preamble - a system for updating merchant on file payment data at a payment processor. While not limiting, the preamble at least provides some insight as to where relevant prior art may be found. In that regard, it is noted that Myatt discloses an account transaction system for performing transactions

from an account, such as a checking account. As such, it is clear that Myatt is not even addressed to the same general use as recited by the preamble of claim 1.

Claim 1 includes a merchant processing selection system receiving selection data for one of two or more types of on file payment data update processing. In contrast, Myatt at col. 4, lines 25-45 discusses the issuance of a transaction to an account holder by an account issuer, in line with the general field of use of Myatt. No merchant processing system is disclosed by Myatt, much less a merchant processing selection system receiving selection data for one of two or more types of on file payment data update processing. Likewise, nothing in column 3 discloses this claim element, and it is noted that column 3 limits the transaction card 112 to one that is "used to purchase goods or services at an account issuer's place of business." As such, it is clear that Myatt utterly fails to even relate to a system for updating merchant on file payment data at a payment processor, as there is only one merchant in the system of Myatt and no payment processor. Furthermore, the claim term "two or more types of on file payment data update processing" refers to two or more types of "on file payment data update processing," but Myatt doesn't include the terms "on file," "payment data" or "update processing" by themselves, much less in combination. It is entirely unclear what exactly in Myatt the Examiner believes is the claimed "two or more types of on file payment data update processing," but based on the ordinary meaning of those terms, Myatt fails to disclose even the first element of claim 1.

Claim 1 also includes a merchant account update system receiving the selection data (which is "selection data for one of two or more types of on file payment data update processing") and processing account update data based on the selection data. As discussed, Myatt fails to disclose merchant accounts, much less a merchant account update system receiving the selection data and processing account update data based on the selection data. The term "merchant account" is not even used in Myatt, and as discussed, Myatt relates to an account transaction system for a single account issuer that would not require selection data for one of two or more types of on file payment data update processing. Because the Examiner has failed to show that Myatt discloses each element of claim 1, the rejection of claim 1 must be **REVERSED**.

Claim 2 includes the system of claim 1 further comprising a database extraction system receiving the selection data and extracting account update records from merchant transaction records stored at a transaction processing system. The Examiner cites to 1) col. 4, lines 28-42

and 2) col. 5, lines 64-68 of Myatt, which address different things. 1) addresses an account user's card and various types of data for the account user that can be stored on the card or stored by the account issuer. 2) addresses a negative file 30 and an authorization file 39 of Myatt, but mentions little else, and does not discuss what these files are. Do any of these disclose a database extraction system receiving the selection data and extracting account update records from merchant transaction records stored at a transaction processing system? No.

Clearly, the materials from Myatt that discuss an account user's payment card and the information that can be stored thereon have no bearing to claim 2. How about the means "for quickly and repeatedly updating or revising the data in the negative file 30 and the authorization file 39?" Is that a database extraction system receiving the selection data and extracting account update records from merchant transaction records stored at a transaction processing system? Data stored in a negative file 30 sounds like it could be merchant transaction records, but it is not. Instead, it is "negative information that identifies . . . account users who present an unacceptable risk of non-payment to the account issuer for an account transaction." Col. 5, lines 27-31. The same is true for authorization file 39, which contains information from "sources [to] compile a ***generic file*** of credit history networks on account users that present an unacceptable risk of non-payment." Col. 5, lines 61-63. As such, Myatt fails to disclose that account update records are extracted from merchant transaction records stored at a transaction processing system. While Myatt shares a few common general ideas with the disclosure of the pending application, Myatt is unrelated to the claimed inventions. Because the Examiner has failed to show that Myatt discloses each element of claim 2, the rejection of claim 2 must be **REVERSED**.

Claim 4 includes the system of claim 1 further comprising a merchant upload system receiving account update data from one or more card processor systems and converting the account update data based on a merchant record format. The Examiner cites to col. 5, lines 35-68 of Myatt, which discusses a "proprietary check authorization file 39" that is a compilation of "negative information" from a plurality of sources. Myatt utterly fails to disclose converting account update data based on a merchant record format anywhere, much less at the section cited by the Examiner, and it is noted that the terms "record" or "format" are not even used anywhere in Myatt. Based on the plain meaning of the claim language, it is difficult to understand how a reference that fails to disclose the terms "record" or "format" could possibly disclose a merchant

upload system receiving account update data from one or more card processor systems and converting the account update data based on a merchant record format. Furthermore, there does not appear to be any correlation between the rejection of account update data as it is used in claim 4 and the rejection of account update data as it is used in other claims, and it appears that the Examiner is applying the prior art to that term inconsistently, although the absence of any detailed explanation from the Examiner of why a reference that does not even use multiple different claim terms is supposed to anticipate a claim makes it difficult to understand what rationale, if any, the Examiner has for rejecting the claims over that reference. Because the Examiner has failed to show that Myatt discloses each element of claim 4, the rejection of claim 4 must be **REVERSED**.

2. Myatt in view of Rajaram fails to provide a prima facie basis for the rejection of claims 3 and 5-21 under 35 U.S.C. 103(a), because they fail to disclose each element of the claimed inventions.

As noted, the construction of the claims is reviewed *de novo*, and the Examiner's construction of the claims is improper and is used to reject claims over a reference or references that fail to disclose the claim elements. Nowhere is that clearer than in claim 21, which includes the system of claim 1 wherein the a merchant processing selection system receiving the selection data for one of two or more types of on file payment data update processing comprises means for receiving the selection data for one of two or more types of on file payment data update processing. The Examiner has refused to examine claim 21 pursuant to M.P.E.P. 2181 et seq., even though the Examiner "acknowledges" that Applicants are invoking 35 U.S.C. 112, paragraph six. See Office action mailed February 2, 2009, page 11. As noted in the Office action response mailed June 23, 2008, controlling Federal Circuit precedent requires in "a means-plus-function claim in which the disclosed structure is a computer, or microprocessor, programmed to carry out an algorithm, ***the disclosed structure is not the general purpose computer, but rather the special purpose computer programmed to perform the disclosed algorithm***." *WMS Gaming, Inc. v. Int'l Game Technology,* 184 F.3d 1339, 1349 (Fed. Cir. 1999). (Emphasis added.) However, the Examiner has failed to identify that the corresponding structure or an equivalent thereof is present in Myatt.

Further recent guidance from the Federal Circuit confirms that flowchart algorithms are the proper structure for means plus function claims drawn to special purpose computers. In *Allvoice Computing v. Nuance Comm.*, 504 F.3d 1236, 1245 (Fed. Cir. 2007), flowchart

algorithms such as those in Figure 4 of the pending application were held to provide sufficient structure for such means plus function limitations. Of particular relevance, the flowchart algorithms reproduced in the Federal Circuit's opinion are provided here for reference:

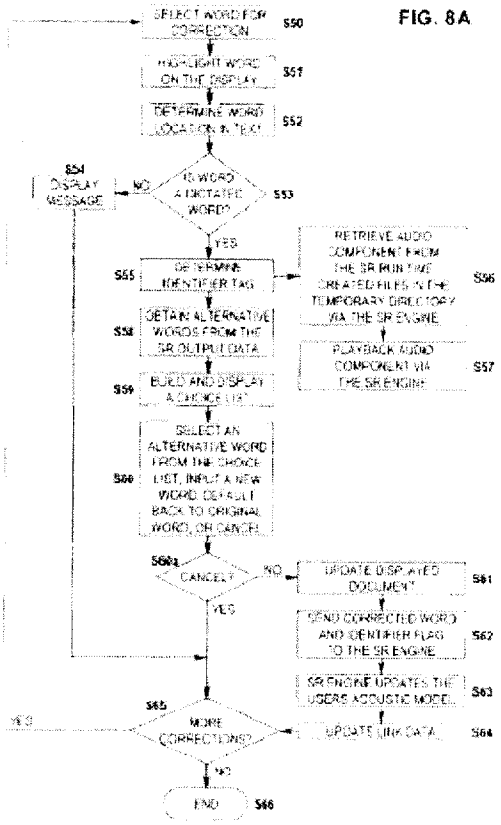

FIG. 8A

Exemplary flowchart algorithms of Figure 4 of the pending application are reproduced below for convenience, and it can be seen that there is no material difference in the way these two flowchart algorithms are presented that would support a finding that the corresponding structure disclosed in the pending application fails to provide the algorithmic structure for the claimed means plus function limitation under *WMS Gaming* or *Allvoice Computing* (it is noted that the Examiner acknowledged that claim 21 invokes 35 USC 112(6) and did not impose any rejections under 35 USC 112):

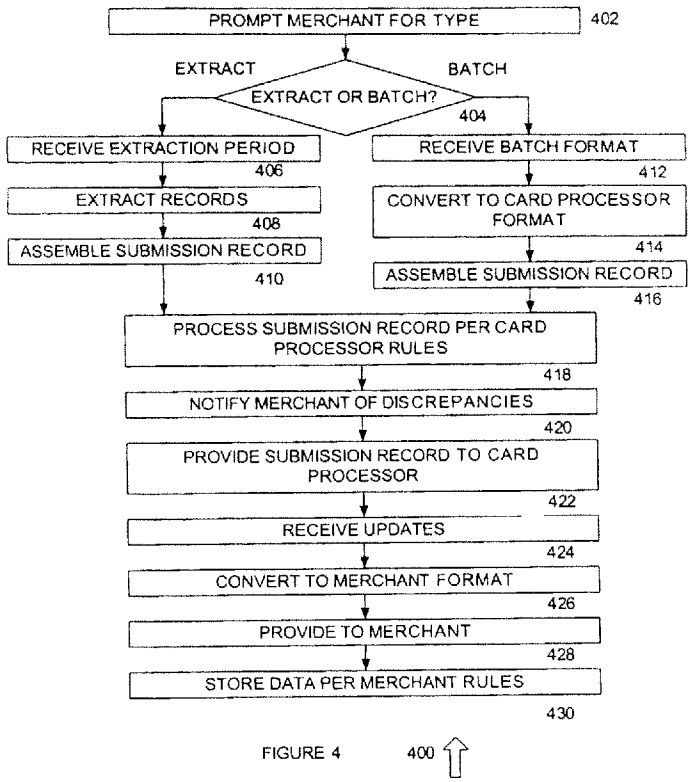

FIGURE 4 400

In this regard, Myatt is similar to U.S. Patent 6,093,102, recently discussed in *Aristocrat Technologies Australia v. International Gaming Technology* 521 F.3d 1328, 1333 (Fed. Cir. 2008) (the corresponding structure is required to be more than simply a general purpose computer or microprocessor), where the Federal Circuit held the claims invalid as indefinite under 35 U.S.C. 112(2), as lacking corresponding structure. A review of Myatt reveals that it, too, is utterly lacking in any relevant structure that would apply to the means plus function limitations in claim 21 (while Rajaram does include some flow chart algorithms, they are unrelated to the structure that corresponds to claim 21, and the Examiner does not appear to rely on Rajaram for the rejection of claim 21). Because the Examiner has failed to show that Myatt in view of Rajaram discloses each element of claim 21, in particular, that either Myatt or Rajaram disclose the same structure as that corresponding to claim 21 or an equivalent thereof (indeed, the Examiner has not even attempted to do so), the rejection of claim 21 must be **REVERSED**.

Claim 3, while not including any means plus function claim limitations, is nonetheless also improperly construed by the Examiner. Claim 3 includes the system of claim 1 further comprising a merchant download system receiving the selection data and extracting account update records from a merchant batch file received at a transaction processing system. The

Examiner admits that Myatt fails to disclose this claim, but asserts that Rajaram discloses it at some unknown and uncited location. Because the Examiner has not even attempted to identify a column and/or line numbers of Rajaram, it is impossible to meaningfully respond to the rejection, other than to note that Rajaram does not even use the terms "download," "merchant download," or "batch," which makes it difficult to understand how Rajaram could possibly disclose a merchant download system receiving the selection data and extracting account update records from a merchant batch file received at a transaction processing system. Because the Examiner has failed to show that Myatt in view of Rajaram discloses each element of claim 3, the rejection of claim 3 must be **REVERSED**.

Claim 5 includes the system of claim 1 further comprising a card processor rules system applying one or more card processor rules to the account update data. The Examiner cites to both Myatt at col. 5, lines 55-68, col. 6, lines 1-42 and to Rajaram at col. 5 for this claim, and does not argue that it is necessary to modify or combine Myatt with Rajaram, which makes the basis for rejecting claim 5 under 35 U.S.C. 103 unclear. However, as neither Myatt or Rajaram disclose this claim, they both fail to provide a prima facie basis for the rejection of claim 5. It is noted that neither Myatt or Rajaram includes the terms "card processor" or "rules," which makes it difficult to understand how either of them could disclose a card processor rules system applying one or more card processor rules to the account update data, based on the ordinary meaning of the claim language. The Examiner's confusing and vague allegations of what allegedly discloses this claim in either reference makes it impossible to do much more to refute the non-arguments presented by the Examiner, although it is noted that col. 5, lines 55-68 of Myatt only discuss the use of a negative file 30 and authorization file 39 by an account issuer, which are not card processor rules but rather files of "negative information," which the Examiner has previously relied on as disclosing unrelated limitations of other claims. The use of different terms in the claims ***requires*** that they connote different meanings, yet the Examiner uses the same disclosure from the cited references to argue that numerous different unrelated claims using unrelated claim terms are anticipated by the cited references, which is an improper construction under controlling Federal Circuit law. *CAE Screenplates Inc. v. Heinrich Fiedler GmbH & Co. KG*, 224 F.3d 1308, 1317 (Fed. Cir. 2000) ("In the absence of any evidence to the contrary, we must presume that the use of these different terms in the claims connotes different meanings."); *Applied Med. Res. Corp. v. U.S. Surgical Corp.*, 448 F.3d 1324, 1333 n.3 (Fed. Cir. 2006)

("[T]he use of two terms in a claim requires that they connote different meanings. . . ."). Because the Examiner has failed to show that Myatt in view of Rajaram discloses each element of claim 5, the rejection of claim 5 must be **REVERSED**.

Claim 6 includes the system of claim 1 further comprising an updater format system converting the account update data from a merchant format to a card processor system format. The Examiner cites to Rajaram at col. 4, lines 30-45 and col. 5, but again, the relevance of these vast sections from Rajaram to the several dozen words of the claim is difficult to understand. The Examiner is essentially saying "this claim is somewhere in one and a half column lines of text – go find it!" However, that does not establish that Rajaram actually discloses this claim. Col. 4, lines 30-45 of Rajaram generally discuss a smart card – completely unrelated to the claimed updater format system converting the account update data from a merchant format to a card processor system format. Rajaram does not even use the terms "convert" or "format," and there is no apparent relevance of this reference to claim 6, as it doesn't even use over half of the words of a claim ("updater format system," "merchant format" and "card processor system format"), including the only verb in the claim. Because the Examiner has failed to show that Myatt in view of Rajaram discloses each element of claim 6, the rejection of claim 6 must be **REVERSED**.

Claim 7 includes the system of claim 1 further comprising a record submission system submitting the account update data to one of two or more card processor systems using procedures specific to each card processor system. The Examiner again cites to vast sections from Rajaram (col. 4, lines 5-55 and col. 5, lines 1-42), and again, the relevance of approximately one-half of the disclosure of Rajaram to the several dozen words of the claim is difficult to understand. Rajaram does not even use the terms "submit," "submission" or "procedure," does not disclose two or more card processor systems, and appears to have almost no relevance to the claimed invention. Because the Examiner has failed to show that Myatt in view of Rajaram discloses each element of claim 7, the rejection of claim 7 must be **REVERSED**.

Claim 8 includes the system of claim 1 further comprising a card processor account update system receiving card processor rules and card processor format data from each of two or more card processor systems and applying the card processor rules and the card processor format data to the account update data prior to submission of the account update data to each card

processor system. The Examiner cites to Myatt at col. 5, lines 55-68 (negative file 30, authorization file 39) and col. 7, lines 1-15 (transfer of money through ACH between bank and account holder), and to col. 4 of Rajaram (smart card), all of which have nothing to do with a card processor account update system receiving card processor rules and card processor format data from each of two or more card processor systems and applying the card processor rules and the card processor format data to the account update data prior to submission of the account update data to each card processor system. The terms "**rule**," "**submission**" and "**format**" are not even used anywhere in either Myatt or Rajaram, and it is therefore simply baffling how those references are supposed to even relate to a card processor account update system receiving card processor **rules** and card processor **format** data from each of two or more card processor systems and applying the card processor **rules** and the card processor **format** data to the account update data prior to **submission** of the account update data to each card processor system. Because the Examiner has failed to show that Myatt in view of Rajaram discloses each element of claim 8, the rejection of claim 8 must be **REVERSED**.

Claim 9 includes the system of claim 1 further comprising a merchant account update system receiving merchant format data from each of two or more merchant systems and converting account update response data received from each of two or more card processor systems for each merchant system using the merchant format data for each merchant system. The Examiner doesn't even bother with citing to column and line of Rajaram, and instead cites to 75% of the Figures of Rajaram as allegedly disclosing the several dozen words of this claim. However, neither Myatt or Rajaram discloses **two or more merchant systems** or **two or more card processor systems**, and therefore those references are simply irrelevant in regards to a merchant account update system receiving merchant format data from each of **two or more merchant systems** and converting account update response data received from each of **two or more card processor systems** for **each merchant system** using the **merchant format data** for **each merchant system**. Because the Examiner has failed to show that Myatt in view of Rajaram discloses each element of claim 9, the rejection of claim 9 must be **REVERSED**.

Claim 10 includes the system of claim 1 further comprising an opt-out system receiving opt-out data from a card holder and extracting an account update record for that card holder from the account update data. The Examiner again cites generally to half of the disclosure in Rajaram, but Rajaram does not use the term "opt-out," and nothing in Rajaram appears to remotely relate

to the invention of claim 10. Because the Examiner has failed to show that Myatt in view of Rajaram discloses each element of claim 10, the rejection of claim 10 must be **REVERSED**.

Claim 11 includes a method for updating merchant on file payment data at a payment processor comprising requesting an update type selection from a merchant, extracting update records at the payment processor if an extraction update type selection is received from the merchant and formatting the extracted update records based on format rules for each of two or more card processing systems. It is simply impossible to understand what the Examiner asserts discloses these steps. Furthermore, to render a method claim under 35 U.S.C. 103, the cited references must teach the method steps in the order required by the claims. *E-Pas s v. 3COM Corp.*, 473 F.3d 1213, 1222 (Fed. Cir. 2007) ("Substantively, because the language of most of the steps of its method claim refer to the completed results of the prior step, E-Pass must show that all of those steps were performed in order.) In keeping with the other claim rejections, the Examiner has simply pointed to vast teachings from Myatt and Rajaram and invites the Applicants to "go and find it." However, neither Myatt nor Rajaram uses the terms "extraction," "extracting" or "extracted," and neither discloses "format," "rules," "format rules" or two or more card processing systems. Because the Examiner has failed to show that Myatt in view of Rajaram discloses each element of claim 11, the rejection of claim 11 must be **REVERSED**.

Claim 12 includes the method of claim 11 wherein extracting the update records at the payment processor if the extraction update type selection is received from the merchant comprises determining whether an update record has been previously submitted, extracting the previously submitted update record from an update file if a response code for the previously submitted update record bars resubmission of the update record. The Examiner cites to Rajaram at col. 4, lines 1-42 (U.S. Treasury financial institution certificates) and col. 6, lines 35-55 (half of claim 1 of Rajaram). Surely, claim 1 of Rajaram must be supported by the specification of Rajaram? But citing to half of the claim suggests that the Examiner merely cited to a section of Rajaram without even bothering to look at what is disclosed in that section. Indeed, the term "previous" is not even used in Rajaram. Because the Examiner has failed to show that Myatt in view of Rajaram discloses each element of claim 12, the rejection of claim 12 must be **REVERSED**.

Claim 13 includes the method of claim 11 further comprising receiving a merchant update request file if a batch update type selection is received from the merchant and formatting

the merchant update request file based on format rules for each of two or more card processing systems. The Examiner cites to the same section of Rajaram for claim 13 that was relied on for claim 12, and as Rajaram doesn't even use the term "format" or disclose two or more card processing systems, the cited section of Rajaram appears to have as much relevance to claim 13 as it has to claim 12, which is to say, none. Because the Examiner has failed to show that Myatt in view of Rajaram discloses each element of claim 13, the rejection of claim 13 must be **REVERSED**.

Claim 14 includes the method of claim 11 further comprising applying one or more card processor rules for one or more of the card processing systems to the extracted update records. The Examiner only cites to col. 3, lines 35-50 of Rajaram, so one would expect the cited materials to be pertinent to the claim, but judge for yourself: "FIG. 1 illustrates an electronic commerce system in accordance with an embodiment of the present invention. The system includes smart card reader 102, display terminal 104, merchant 106, financial institution 108, US Treasury 109, smart card provider 110, consumer 112, and smart card 114. Smart card reader 102 provides an interface to smart card 114 for transferring data to and from smart card 114. Smart card reader 102 is coupled to display terminal 104 to allow consumer 112 to view potential transactions, select an account to debit, authorize transactions, and the like. Display terminal 104 can be any device, which allows consumer 112 to display and enter data, including a personal computer with a web browser." What are the one or more card processor rules in the cited materials? What are the one or more of the card processing systems? What are the extracted update records? And more importantly, when this section is so obviously unrelated and utterly lacking of relevance to claim 14, why is there any reason to believe that the much larger sections of materials from Myatt and Rajaram that are applied to the other claims are not also equally nonsensical? Because the Examiner has failed to show that Myatt in view of Rajaram discloses each element of claim 14, the rejection of claim 14 must be **REVERSED**.

Claim 15 includes the method of claim 11 wherein extracting the update records at the payment processor if the extraction update type selection is received from the merchant comprises determining whether an update record is for a restricted merchant category for one or more of the card processing systems and removing the update record associated with the restricted merchant category code from an update file. The Examiner merely cites cryptically to claim 11, which provides absolutely no guidance whatsoever as to what the Examiner believes

corresponds to the claim 15 in Myatt or Rajaram, neither of which disclose a restricted merchant category. Because the Examiner has failed to show that Myatt in view of Rajaram discloses each element of claim 15, the rejection of claim 15 must be **REVERSED**.

Claim 16 includes a method for updating merchant on file payment data at a payment processor comprising requesting an update type selection from a merchant, extracting update records at the payment processor if an extraction update type selection is received from the merchant and receiving update records from the merchant if a batch update type selection is received from the merchant. Again, the Examiner merely cites cryptically to claim 11, which provides absolutely no guidance whatsoever as to what the Examiner believes corresponds to the claim 16 in Myatt or Rajaram. While both claims 11 and 16 includes "requesting an update type selection from a merchant, extracting update records at the payment processor if an extraction update type selection is received from the merchant," claim 16 includes "receiving update records from the merchant if a batch update type selection is received from the merchant" while claim 11 includes "formatting the extracted update records based on format rules for each of two or more card processing systems." Rajaram does not use the term "batch," but Myatt does use that term in one location (other than the claims), at col. 6, lines 51-54, which state "A logged transaction or as usually performed, a batch of logged transactions are communicated from the automatic clearing house 38 via a communications network 20 to the money access account means processor 34." The Automated Clearing House is not "a merchant," and it is absurd to equate receiving records from a merchant with receiving records from the Automated Clearing House, which is a transaction system backbone for debit and checking transactions. As anyone that has even a rudimentary understanding of the relevant technology would know, a merchant and the Automated Clearing House are two unrelated and functionally distinguishable components of debit and checking transaction systems – merchants interface with consumers and various payment networks (usually through intermediaries), while the ACH transfers money between banks. Because the Examiner has failed to show that Myatt in view of Rajaram discloses each element of claim 16, the rejection of claim 16 must be **REVERSED**.

Claim 17 includes the method of claim 16 further comprising applying one or more card processing system formats to the update records. The Examiner again cites to voluminous sections of Myatt, but as Myatt does not even use the term "format," that appears to again be simple obfuscation. Because the Examiner has failed to show that Myatt in view of Rajaram

discloses each element of claim 17, the rejection of claim 17 must be **REVERSED**.

Claim 18 includes the method of claim 16 further comprising applying one or more card processing system rules to the update records. The Examiner cites all of col. 3 of Rajaram, which Appellants are tempted to reproduce here so that the utter lack of relevance of that section to claim 18 can be appreciated, but instead, it is noted that the cited section of Rajaram discusses CDs, DVDs and smart card readers, but doesn't mention applying one or more card processing system rules to the update records. Because the Examiner has failed to show that Myatt in view of Rajaram discloses each element of claim 18, the rejection of claim 18 must be **REVERSED**.

Claim 19 includes the method of claim 16 further comprising receiving update response records from one or more card processing systems in response to submission of the update records to the one or more card processing systems and applying a merchant format to the update response records. The Examiner again cites to col. 3 of Rajaram, as well to all of the Figures of Rajaram, but as previously noted, Rajaram doesn't even use the terms "submit," "submission," or "format," as well as the term "update" or "record," so apparently, the Examiner believes that Rajaram somehow applies to claim 19 without using any of the operative terms in the claim. How can claim 19 be construed according to the ordinary meaning of the claim terms by the Examiner when none of the claim terms are even found in the reference that allegedly discloses claim 19? It obviously cannot, and the rejection of claim 19 over Myatt in view of Rajaram is clearly improper and baseless and must be **REVERSED**.

Claim 20 includes the method of claim 16 further comprising submitting the update records to two or more card processing systems based on an update record submission process set by each of the card processing systems. The Examiner cites to col. 3 and 4 of Rajaram, but as Rajaram doesn't disclose two or more card processing systems, or even use the terms "**update,**" "**submitting**" or "**submission**," it is baffling how Rajaram could possibly disclose "**submitting** the **update** records to **two or more card processing systems** based on an **update** record **submission** process set by **each of the card processing systems**." Rajaram doesn't appear to even be marginally relevant to the claimed invention. Because the Examiner has failed to show that Myatt in view of Rajaram discloses each element of claim 20, the rejection of claim 20 must be **REVERSED**.

VIII. APPENDIX OF CLAIMS (37 C.F.R. § 41.37(c)(8))

The text of the claims involved in the appeal are as follows:

1. A system for updating merchant on file payment data at a payment processor comprising:

a merchant processing selection system receiving selection data for one of two or more types of on file payment data update processing; and

a merchant account update system receiving the selection data and processing account update data based on the selection data.

2. The system of claim 1 further comprising a database extraction system receiving the selection data and extracting account update records from merchant transaction records stored at a transaction processing system.

3. The system of claim 1 further comprising a merchant download system receiving the selection data and extracting account update records from a merchant batch file received at a transaction processing system.

4. The system of claim 1 further comprising a merchant upload system receiving account update data from one or more card processor systems and converting the account update data based on a merchant record format.

5. The system of claim 1 further comprising a card processor rules system applying one or more card processor rules to the account update data.

6. The system of claim 1 further comprising an updater format system converting the account update data from a merchant format to a card processor system format.

7. The system of claim 1 further comprising a record submission system submitting the account update data to one of two or more card processor systems using procedures specific to each card processor system.

8. The system of claim 1 further comprising a card processor account update system receiving card processor rules and card processor format data from each of two or more card processor systems and applying the card processor rules and the card processor format data to the account update data prior to submission of the account update data to each card processor system.

9. The system of claim 1 further comprising a merchant account update system receiving merchant format data from each of two or more merchant systems and converting account update response data received from each of two or more card processor systems for each merchant system using the merchant format data for each merchant system.

10. The system of claim 1 further comprising an opt-out system receiving opt-out data from a card holder and extracting an account update record for that card holder from the account update data.

11. A method for updating merchant on file payment data at a payment processor comprising:

requesting an update type selection from a merchant;

extracting update records at the payment processor if an extraction update type selection is received from the merchant; and

formatting the extracted update records based on format rules for each of two or more card processing systems.

12. The method of claim 11 wherein extracting the update records at the payment processor if the extraction update type selection is received from the merchant comprises:

determining whether an update record has been previously submitted;

extracting the previously submitted update record from an update file if a response code for the previously submitted update record bars resubmission of the update record.

13. The method of claim 11 further comprising:

receiving a merchant update request file if a batch update type selection is received from the merchant; and

formatting the merchant update request file based on format rules for each of two or more card processing systems.

14. The method of claim 11 further comprising applying one or more card processor rules for one or more of the card processing systems to the extracted update records.

15. The method of claim 11 wherein extracting the update records at the payment processor if the extraction update type selection is received from the merchant comprises:

determining whether an update record is for a restricted merchant category for one or more of the card processing systems; and

removing the update record associated with the restricted merchant category code from an update file.

16. A method for updating merchant on file payment data at a payment processor comprising:

requesting an update type selection from a merchant;

extracting update records at the payment processor if an extraction update type selection is received from the merchant; and

receiving update records from the merchant if a batch update type selection is received from the merchant.

17. The method of claim 16 further comprising applying one or more card processing system formats to the update records.

18. The method of claim 16 further comprising applying one or more card processing system rules to the update records.

19. The method of claim 16 further comprising:

receiving update response records from one or more card processing systems in response

to submission of the update records to the one or more card processing systems; and

applying a merchant format to the update response records.

20. The method of claim 16 further comprising submitting the update records to two or more card processing systems based on an update record submission process set by each of the card processing systems.

21. The system of claim 1 wherein the a merchant processing selection system receiving the selection data for one of two or more types of on file payment data update processing comprises means for receiving the selection data for one of two or more types of on file payment data update processing.

IX. EVIDENCE APPENDIX (37 C.F.R. 41.37(c)(9))

None.

X. RELATED PROCEEDINGS APPENDIX (37 C.F.R. 41.37(c)(10))

None.

If any applicable fee or refund has been overlooked, the Commissioner is hereby authorized to charge any fee or credit any refund to the Deposit Account of Jackson Walker L.L.P., No. 10-0096.

Respectfully submitted,

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Date: July 6, 2009

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